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/ Thomas W. Humphrey /
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July 12, 2010
Date

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Craig A. Andreiko
Serial No.: 10/528,036
Filing Date: December 2, 2005
Examiner: Heidi Marie Eide
Art Unit: 3732
Confirmation No.: 2750
Title: CUSTOM ORTHODONTIC APPLIANCE SYSTEM AND METHOD
Attorney Docket: ORM-231US

Cincinnati, Ohio

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants request review of the April 12, 2010 final rejections in the above-identified application. No amendments are filed herewith. This request is being filed concurrently with a Notice of Appeal. The review is requested for the reasons set out hereinbelow.

REMARKS/ARGUMENTS FOR REVIEW

Claims 26-28 and 45-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sachdeva et al. U.S. Patent No. 6,315,553 (*Sachdeva*) in view of DeBusk et al. U.S. Patent No. 5,991,728 (*DeBusk*). Applicants will here focus on certain points with respect to the independent claims in this case, namely, claims 26, 46, and 47.

Applicant's independent claims are generally directed toward storing, in a database, information related to a plurality of practitioners, where part of that information

includes the practitioner's preferences as to orthodontic prescriptions which the practitioner uses when treating orthodontic patients and creating an orthodontic appliance. Specifically, independent claim 29 requires "storing in the database, information identifying each of the practitioners of the plurality and information relating to treatment plan options including default preferences as to orthodontic prescriptions associated with each of the respective practitioners," and "determining parameters for the configuration of a custom orthodontic appliance for the patient based at least in part on the stored treatment plan options associated with the orthodontic practitioner; and providing to the orthodontic practitioner an orthodontic appliance design for the patient having a configuration that includes the determined parameters". Similarly, claim 47 recites "providing to the orthodontic practitioner a custom orthodontic appliance for orthodontic treatment of the individual patient designed in part based on patient-specific information associated with the request and in part based on default information of treatment preferences including default preferences". Claim 46 recites "providing an orthodontic appliance for an individual patient having a configuration that includes appliance parameters based at least in part on predetermined treatment plan options including default preferences ... associated with the practitioner that have been retrieved from a previously created and maintained database containing data associating a plurality of orthodontic practitioners with treatment plan options".

The Examiner has relied on Sachdeva as the primary reference from the first action on the merits. DeBusk was added starting with the second action. Since the addition of DeBusk, the Examiner has changed her position as to what is disclosed in Sachdeva and what is disclosed in DeBusk. In the Office Action mailed on March 31, 2009, the Examiner took the position that Sachdeva disclosed the claim invention with the exception of "maintaining a database accessible by computer and containing data relating to each of a plurality of

practitioners” and “storing in the database, information identifying the practitioners and information relating to treatment plan options including preferences as to one or both of orthodontic prescription and orthodontic appliance hardware associated with the respective practitioners.” The Examiner relied upon DeBusk to supply the missing disclosure. In response, Applicant pointed out that DeBusk also fails to show a database accessible by a computer and containing “treatment plan ... preferences” of practitioners.

In response to this observation by Applicant, the Examiner now cites Sachdeva for teaching a “database, accessible by computer” and “storing in the database information relating to prescriptions”. The Examiner is now of the view that the only element of the independent claims that Sachdeva is a database containing data related to each of a plurality of practitioners. However, this rejection remains incorrect for the reason that nothing in DeBusk or Sachdeva suggests the development of options for a treatment plan, or the individualization of the same to particular individuals. This was novel with present application and is entitled to be so recognized.

DeBusk is directed towards a system of tracking supplies used in various procedures, where there is a general template for a bill of materials (BOM) per each procedure. These general BOMs can be specifically tailored for each doctor who uses supplies not included in the general BOMs. The extra supplies are offered in Conditional Bundles, thus allowing a user to select ad hoc the supplies used by differing doctors. Thus DeBusk generally discloses an inventory management system that can be specifically tailored to include the hardware individual practitioners use in various medical procedures; however it fails to disclose anything akin to appliances, as opposed to supplies, specifically tailored to individual practitioners, much less appliances tailored to treatment plan options for a patient. The tools used for a procedure are not

the same as the treatment plan for the patient or the appliance for the patient, and there is no suggestion in DeBusk to associate the Conditional Bundles with specific treatment plans or an appliance, nor is there mention of a database to do so.

The Examiner has previously stated that “DeBusk teaches a database that store (sic) information relating to a plurality of practitioner (sic) regarding information relating to default preferences of preferred hardware on a selected procedure.” However, the claims recite storing, in the database, information identifying each of the practitioners of the plurality and information relating to treatment plan options including default preferences as to orthodontic prescriptions” and an appliance that carries out the treatment plan. The “conditional hardware bundles” of the DeBusk patent cannot meet this language.

CONCLUSION

As seen from the foregoing, attention to the details of the claimed invention and the prior art reveals that the rejections are plainly in error. Applicants should not be forced through the time and expense of a full-blown appeal. Instead, it is respectfully submitted the rejections should be withdrawn and the case allowed.

Respectfully submitted,
WOOD, HERRON & EVANS, L.L.P.

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